UNITED
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A

General Assembly

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A/AC.242/L.5
25 July 1994

ORIGINAL: ENGLISH

AD HOC COMMITTEE ON THE ELABORATION
OF AN INTERNATIONAL CONVENTION
DEALING WITH THE SAFETY AND
SECURITY OF UNITED NATIONS AND
ASSOCIATED PERSONNEL
1-12 August 1994
Agenda item 5

ELABORATION, PURSUANT TO PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 48/37 OF 9 DECEMBER 1993, OF AN INTERNATIONAL CONVENTION DEALING WITH THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, WITH PARTICULAR REFERENCE TO RESPONSIBILITY FOR ATTACKS ON SUCH PERSONNEL

Proposal by the delegation of Poland

1. The delegation of the Republic of Poland, taking into account the views and opinions expressed by other delegations during the first session of the Ad Hoc Committee and wishing to contribute to the progress of its work, herewith submits a draft proposal for two initial articles dealing with definitions and application of the future convention.

2. These articles were thoroughly discussed at the first session though there was no agreement reached about their inclusion in a definite form in the negotiating text. The Polish delegation wishes to propose a compromise version which could be acceptable for other members of the Committee. To this end we also consider useful a reservation clause to be included in article 2, paragraph 4, enabling some States to accept a narrower scope of obligations without total rejection of the convention.

"Article 1

"Definitions

"For the purpose of this Convention:

"1. 'United Nations personnel' means those persons in respect of whom this Convention applies in accordance with article 2.

"2. 'United Nations operation' means an operation authorized by the Security Council, the General Assembly, the Secretary-General or a specialized agency or other organ or programme of the United Nations.

"3. 'Host State' means a State in whose territory the United Nations operation is conducted and, with exception of article 4, paragraph 1, in whose territory United Nations personnel are in transit directly before or after such operation.

"Article 2

"Application

"1. This Convention shall apply in respect of all persons, military and civilian, assigned by the Secretary-General or a specialized agency or other organ or programme of the United Nations to participate in order to carry out activities in connection with a United Nations operation.

"2. This Convention shall not apply where the operation was authorized by the Security Council as an enforcement action.

"3. This Convention shall also apply in respect of all persons assigned by any other intergovernmental or non-governmental agency or organization undertaking humanitarian activities in connection with a United Nations operation where such agency or organization is operating pursuant to an agreement or a contract with the United Nations.

"4. This Convention shall not apply where the crime against United Nations personnel is committed within a single State, the victim and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

"5. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 3 of this article. The other States Parties shall not be bound by paragraph 3 of this article with respect to any State Party which has made such a reservation."

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Proposal by Austria

Article 8 bis

Transit State

1. For the purposes of this Convention, "transit State" means a State through which United Nations personnel pass in connection with a United Nations operation in a host State.

2. The consent of the transit State is required for the transit of United Nations personnel in connection with a United Nations operation.

3. The transit State shall accord to United Nations personnel such privileges and immunities as are necessary for the transit to and from a host State. Without prejudice to their privileges and immunities, United Nations personnel shall respect the laws and regulations of the transit State.

4. The transit State shall provide appropriate support to a United Nations operation, and in particular shall facilitate the transit of its personnel and equipment.

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ELABORATION, PURSUANT TO PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 48/37 OF 9 DECEMBER 1993, OF AN INTERNATIONAL CONVENTION DEALING WITH THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, WITH PARTICULAR REFERENCE TO RESPONSIBILITY FOR ATTACKS ON SUCH PERSONNEL

Proposal by the United Kingdom

Replace articles 1 and 2 by the following:

"Article 1

"Definitions

"1. For the purposes of this Convention:

"(a) 'United Nations personnel' means:

(i) Persons engaged or deployed by the Secretary-General to participate in a United Nations operation, in whatever capacity;

(ii) Other United Nations officials present in an official capacity in the area where a United Nations operation is being conducted;

(iii) Persons deployed by their Government or by an intergovernmental or humanitarian non-governmental organization or agency to carry out, under an agreement with the Secretary-General, activities directly connected with the implementation of the mandate of a United Nations operation;

"(b) 'United Nations operations' means:

(i) An operation established pursuant to a mandate set forth in a resolution of the Security Council and conducted under the authority of the Security Council for the purpose of maintaining or restoring peace and security;

(ii) An operation undertaken by an observer mission established pursuant to a mandate given by the General Assembly for the purpose of maintaining or restoring peace and security.

"2. This Convention shall not apply in respect of personnel engaged as combatants in an international armed conflict."

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Agenda item 5

ELABORATION, PURSUANT TO PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 48/37 OF 9 DECEMBER 1993, OF AN INTERNATIONAL CONVENTION DEALING WITH THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, WITH PARTICULAR REFERENCE TO RESPONSIBILITY FOR ATTACKS ON SUCH PERSONNEL

Proposal by India

Replace article 6 with the following:

Article 6

Applicability of international humanitarian law

Nothing in this Convention shall in any way affect the application of international humanitarian law to which the host State is a party in relation to the protection of United Nations operations and personnel or the responsibility of such personnel to respect such law. The United Nations will enter into a status-of-forces agreement with the host State, specifying the laws applicable.

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ELABORATION, PURSUANT TO PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 48/37 OF 9 DECEMBER 1993, OF AN INTERNATIONAL CONVENTION DEALING WITH THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, WITH PARTICULAR REFERENCE TO RESPONSIBILITY FOR ATTACKS ON SUCH PERSONNEL

Proposal by France

Article 11. Crimes against United Nations personnel

1. The intentional commission of the following shall constitute a crime:

(a) A murder, kidnapping or other attack directed against the person or liberty of any United Nations or associated personnel defined in article 2 of this Convention;

(b) An attack, by resorting to violence, directed against property and likely to endanger the person in question.

2. The following shall also constitute a crime:

(a) An attempt to commit any of the crimes set out in paragraph 1 of this article;

(b) Acting as an accomplice of a person who commits or attempts to commit any of those crimes.

Article 11 bis. Sanctions

Each State Party shall undertake to suppress the crimes defined in the preceding article by appropriate penalties which shall take into account their grave nature.

Article 12. Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State.

2. A State Party may also establish its jurisdiction over any such crime when the victim is a national of that State.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over a crime set out in article 11 in cases where the alleged offender is present in its territory and it does not extradite such person after having received a request for extradition from a State Party whose jurisdiction to prosecute is based on a jurisdiction rule which also exists in the law of the requested State.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 14. Measures to ensure prosecution or extradition

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 above shall be notified in conformity with the national law of the States Parties to the Secretary-General and, either directly or through the Secretary-General, to:

(a) The State where the crime was committed;

(b) The State of which the alleged offender is a national;

(c) The State of which the victim is a national.

Article 15. Prosecution of alleged offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, upon the request of the requesting Party, the case to its competent authorities so that legal proceedings may be instituted if there are grounds under its national law. The requesting Party shall be informed of action taken in compliance with its request.